

REAL ESTATE TRANSFER NEWS

February 1998

The following questions and answers are given as general interpretations of the Wisconsin Administrative Code and Statutes. Should you have any questions, please write to:

Bureau of Utility & Special Taxes
Division of State & Local Finance
Wisconsin Department of Revenue
P.O. Box 8933
Madison, WI 53708-8933

The "Guidelines for Real Estate Transfer Fee and Return" (Publication 802, r. 2/97) can be found on the internet at <http://www.dor.state.wi.us>. Click on "**Forms & Publications**", then "**Local Government Forms & Publications**."

Additional questions regarding the new transfer fee form (PE-500, r. 11/97) asked of the Department of Revenue will be answered via letter by John Rader, Administrator in the near future.

- 1Q. In the last newsletter, there was an example of a married couple (H & W) owning real property together which they want to convey directly INTO an LLC whose sole member is W. Would a conveyance be exempt from transfer fee coming OUT of that same LLC to both of them?**
- A.** No, there is a fee on one half of the value. Since H is not a member of the LLC, he does not meet the relationship requirement and the conveyance is treated the same as from any unrelated entity. However, the LLC could convey to W and be exempt per s. 77.25(15s), Stats. Then W could convey one half interest to H and be exempt per s. 77.25(8m), Stats.
- 2Q. Please explain the requirement of 3 years in exemption 15 with corporations.**
- A.** This requirement only applies on conveyances FROM the corporation. In addition to the shareholder relationship and for no consideration other than stock or assumption of debt, the corporation must have had title to the property for 3 or more years. The holding period does not apply for conveyances TO the corporation.
- 3Q. On the "old" transfer return, when the ownership transferred was "Partial" or "Other" an explanation was required. On Line 53 of the revised 11/97 return, does "Partial" as well as "Other" require an explanation?**
- A.** Yes. The Instructions (PE-500A, r. 11/97) state that if "Partial" or "Other" is marked, explain in the spaces provided. For "Partial", an example would be if only 1/2 of the property was conveyed and for "Other" if a retained life estate was now released.
- 4Q. If a rental property is resold within five years and the Certificate of Compliance, Stipulation or Waiver is still valid, what exclusion code is used for PART III, ENERGY?**
- A.** No exclusion code is appropriate. Line 34 should be checked "Yes" and the original certificate (with green seal) should be attached to the deed. If previously recorded, attach a photocopy of the Certificate to show the Register of Deeds that there is no need to re-record. For questions regarding Weatherization Standards, please contact the Department of Commerce at (608) 267-2240.

- 5Q. A condominium is selling its units as “life estates” for \$100,000.00. At the time of sale, they also sign a “Repurchase Agreement” whereby the condominium will purchase the “life estate” back for 90% of the \$100,000.00. What transfer fees are due and at what values?**
- A.** Upon recording the Life Estate, a transfer fee is due on the \$100,000.00. A life estate is a conveyance of real property interest and was addressed with RETN, June 1993, Question 19. The “repurchase” will be subject to fee on the value of \$90,000.00 (\$100,000 X 90%) when the instrument is recorded terminating the life estate. The value is determined by s. 77.21(3)(a), Stats. as “the amount of the full actual consideration paid therefore or to be paid, including the amount of any lien or liens thereon.”
- 6Q. Another condominium is selling it's units as a 75 year lease for \$100,000.00. Is a transfer return and fee due?**
- A.** No. A lease less than 99 years is not a conveyance of real property per s. 77.21(1), Stats. The document recorded should have something included on it's face stating “this is a lease less than 99 years and is not subject to return per s. 77.21(1), Stats.” The filer must exempt the document, not the Register of Deeds.
- 7Q. AB, LLC holds title to real estate. AB, LLC consists of 2 unrelated individuals, X and Y. Y sells his membership to X. AB, LLC will continue as always, but X wants to record a deed indicating AB, LLC is now a solely owned LLC. Is this transaction subject to transfer fee?**
- A.** No. The selling of membership in a LLC is personal property and nothing needs to be recorded since there is not a real property conveyance. When a deed is recorded ONLY indicating a change in membership interest (*AB, LLC; consisting of X and Y, as grantor quit claims to AB, LLC; consisting of X, as grantee*), the use of exemption 3 can be used “reforming a previously recorded deed.” When completing the return, indicate Type of Transfer as “Other” and explain with the statement “reforming members on document number _____.” with reference to the document number the LLC took title.
- 8Q. Does a transfer return have to be filed when a IRS Certificate of Sale of Seized Property, (form 2435) is recorded?**
- A.** No. This document is used to place a lien on the property for 180 days as a redemption period for the person whose property was seized. After the 180 days, and if nothing has been done to redeem the property, the IRS will give the buyer a District Quit Claim Deed and transfer return to record. This transaction is usually subject to fee. The use of exemption 2 as a governmental agency does not apply since the government did not have title and is only acting as a fiduciary in passing the title from the person the property was seized from to a 3rd party buyer. This is similar to a 3rd party Sheriff Sale where the fee is due.
- 9Q. When an Abridgment of Judgment is recorded, how should Line 61 be completed when the grantor refuses to sign?**
- A.** The Clerk of Courts may sign as agent on Line 61 and then complete Lines 62 through 70.